



# HOUSE OF REPRESENTATIVES

SB 1169

mental health power of attorney

Prime Sponsor: Senator Barto, LD 15

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**DPA** Committee on Health

**X** Caucus and COW

House Engrossed

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## **OVERVIEW**

SB 1169 makes changes to the provisions related to a mental health care power of attorney.

## **PROVISIONS**

1. Removes the terminology (a level one behavioral health facility) and replaces it with inpatient psychiatric facility.
2. Removes the requirement that a guardian present a facility with a sworn statement under penalty of perjury that the guardian has presented to the facility a certified copy or a true and correct copy of a certified copy, letters of guardianship with mental health authority that authorize the guardian to admit the ward to a level one behavioral health facility and that the letters of guardianship are currently effective and have not been revoked, terminated or rescinded.
3. Includes a physician who is a specialist in neurology as a physician who may determine if a person lacks the ability to give informed consent.
4. States that if a patient admitted to or being treated in an inpatient psychiatric facility under the authority of an agent pursuant to a mental health care power of attorney manifests the desire to disqualify an agent or to revoke a mental health care power of attorney and requests in writing to be discharged from the facility, the facility must either discharge the patient or initiate proceedings for court ordered evaluation or treatment:
  - a. Within 48 hours after the facility receives this request, excluding weekends and legal holidays; and
  - b. On the following court day if the 48 hour period expires on a weekend or holiday.
5. Stipulates that the discharge criteria outlined above does not apply if the facility is prohibited from discharging the person under federal law or the principal has been determined to be incapable, the treating physician believes that further inpatient treatment is necessary or advisable and the agent under the power of attorney has consented to the continued treatment.
6. Allows a principal under a mental health care power of attorney to disqualify an agent or revoke all or any portion of the power of attorney except during times when principal has been found to be incapable.
7. Adds language to the sample mental health care power of attorney that states:
  - a. This mental health care power of attorney or any portion of it may not be revoked and any designated agent may not be disqualified by me during times that I am found to be

unable to give informed consent. However, at all other times I retain the right to revoke all or any portion of this mental health care power of attorney or to disqualify any agent designated by me in this document.

8. Defines *inpatient psychiatric facility*.
9. Makes technical and conforming changes.

**Amendments**

**Committee on Health**

1. Clarifies that a health care directive may not be revoked when the principal has been found to be incapable.

**CURRENT LAW**

Contained within Title 36, Chapter 32 is the laws related to living wills and health care directives. Article 6 contains the provisions related to a mental health care power of attorney. A principal may designate an agent to make mental health care decisions on that person's behalf. An agent may make decisions about mental health treatment for the principal if the principal is found incapable. If an adult does not have a mental health care power of attorney, an agent with a health care power of attorney may make decisions about mental health treatment on behalf of the principal. These decisions must be consistent with any wishes expressed by the principal [A.R.S. 36-3281](#).